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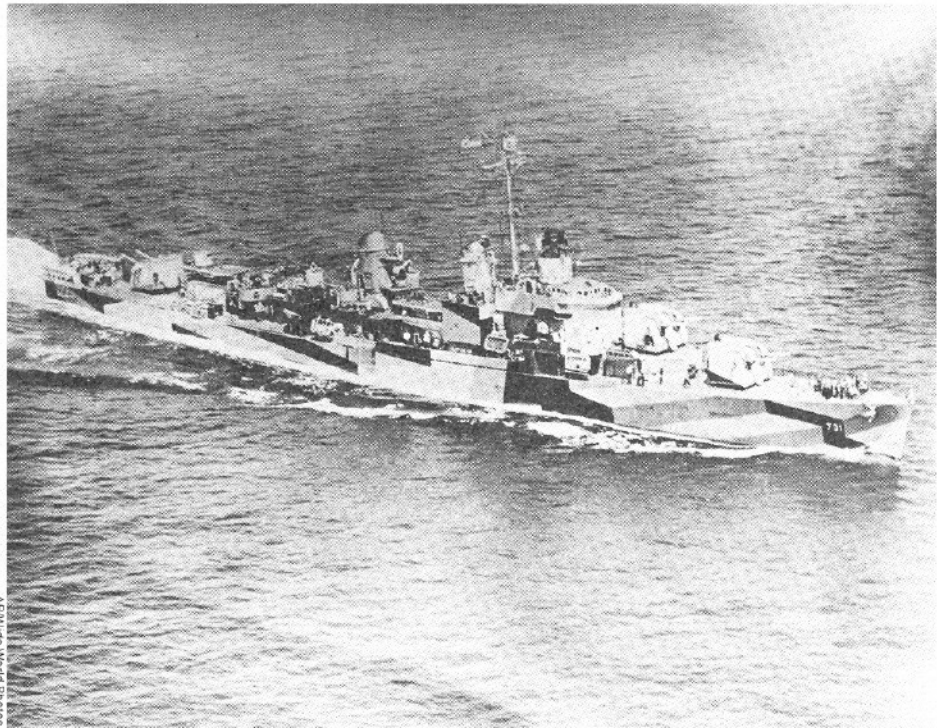
Tonkin Gulf Resolution

The Vietnam War was considered by many to be unconstitutional because there was never a formal declaration of war by Congress as required in Article I, Section 8, of the U.S. Constitution. However, the Tonkin Gulf Resolution, which passed 88-2 in the Senate and 416-0 in the House of Representatives in August 1964, was relied upon heavily by the Department of Justice and the State Department as "the functional, equivalent of a declaration of war" (in the words of Nicholas deB. Katzenbach, under secretary of state, in 1967). The resolution was prompted by President Lyndon B. Johnson's report to Congress that the North Vietnamese had fired upon two U.S. destroyers in international waters in the Gulf of Tonkin. The resolution reads as follows (78 Stat. 384 [1964]):

Tonkin Gulf Resolution

Sec. 1. Whereas naval units of the Communist regime in Vietnam, in violation of the principles of the Charter of the United Nations and of international law, have deliberately and repeatedly attacked United States naval vessels lawfully present in international waters, and have thereby created a serious threat to international peace:

The Defense Department released this photograph of a North Vietnamese torpedo boat approaching the destroyer U.S.S. *Maddox* in the Gulf of Tonkin shortly after the North Vietnamese boat fired on the destroyer on August 2, 1964. The incident led to the Gulf of Tonkin Resolution.



AP/Wide World Photos

Whereas these attacks are part of a deliberate and systematic campaign of aggression that the Communist regime in North Vietnam has been waging against its neighbors and the nations joined with them in the collective defense of their freedom:

Whereas the United States is assisting the peoples of southeast Asia to protect their freedom and has no territorial, military or political ambitions in that area, but desires only that these peoples should be left in peace to work out their own destinies in their own way: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress approves and supports the determination of the President, as Commander-in-Chief, to take all necessary measures to repel any armed attack against the forces of the United States and to prevent further aggression.

Sec. 2. The United States regards as vital to its national interest and to world peace the maintenance of international peace and security in southeast Asia. Consonant with the Constitution of the United States and the Charter of the United Nations and in accordance with its obligations under the Southeast Asia Collective Defense Treaty, the United States is, therefore, prepared, as the President determines, to take all necessary steps, including the use of armed force, to assist any member or protocol state of the Southeast Asia Collective Defense Treaty requesting assistance in defense of its freedom.

Sec. 3. This resolution shall expire when the President shall determine that the peace and security of the area is reasonably assured by international conditions created by action of the United Nations or otherwise except that it may be terminated earlier by resolution of the Congress.

The Pentagon Papers later revealed that the Pentagon had drafted the resolution fully six months before the attacks on the U.S. vessels occurred; that during this time the United States had been mounting clandestine military attacks against North Vietnam; that the two American vessels were actually on intelligence-gathering missions; and that they could not be distinguished by the North Vietnamese from raiding vessels in the area manned by South Vietnamese, which were engaged in offensive military operations.

The Tonkin Gulf Resolution, though not a congressional authorization for war, may reasonably be interpreted as an attempt by Congress to delegate its war powers to the President and directly to authorize his acts in the nature of reprisals.

EDWIN BROWN FIRMAGE



Senators Wayne Morse, *left*, of Oregon and Ernest Gruening, *right*, of Alaska were the only members of Congress who voted against the Tonkin Gulf Resolution.

The Congress which passed the Tonkin Gulf Resolution and similar legislative declarations lived in the shadow of the long, bitter, and frustrating campaign of Korea.

EUGENE V. ROSTOW

After 1968, there were numerous statements made that Congress may have been deceived by the executive in making the Tonkin Gulf Resolution. However, Professor Louis Henkin, an authority on constitutional law, argued that it is constitutionally immaterial whether Congress knew what it was doing or its hand was forced to do it: by the terms of the resolution, Congress could repeal it at any time by resolution, and additionally, Congress kept appropriating money to support the Vietnam War.

In fact, Congress did repeal the resolution in 1971. President Richard M. Nixon then shifted to the commander-in-chief provisions of the Constitution as his authority for continuing the war. Further, many members of Congress found it impossible to cut war appropriations while the troops were overseas and needed support; moreover, the appropriations process usually lags behind wartime expenditures. These and other arguments contained in the book *The Judiciary and Vietnam* (cited below) cast some doubt on the legitimacy of the circumstances surrounding the passage of the Tonkin Gulf Resolution and the constitutional conclusions reached by the executive branch in its continued pursuit of the Vietnam War. In particular, once the resolution was revoked by Congress in January 1971, it was argued that the president had no further power to wage war even though he was commander in chief of the armed forces, because the power to declare war was explicitly entrusted by the framers of the Constitution to Congress. As Alexander Hamilton put it in *The Federalist*, no. 69, the president's authority, unlike the British king's, "would amount to nothing more than the supreme command and direction of the military and naval forces." The British king, said Hamilton, could declare war and raise and regulate fleets and armies, but all these powers under the new Constitution of the United States "would appertain to the legislature."

The Vietnam War was the longest, costliest, and most controversial war in U.S. history. The Tonkin Gulf Resolution, used as legal justification for the war, was the focal point of much of that controversy.

Bibliography: Anthony A. D'Amato and Robert M. O'Neil, *The Judiciary and Vietnam* (1972); Louis Henkin, *Foreign Affairs and the Constitution* (1972).